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27 Attorneys for Defendant
28 CITY AND COUNTY OF SAN FRANCISCO

18 UNITED STATES DISTRICT COURT

19 NORTHERN DISTRICT OF CALIFORNIA

20 METRO FUEL LLC, a Delaware limited
21 liability company,

22 Plaintiff,

23 vs.

24 CITY OF SAN FRANCISCO, a municipal
25 corporation, COUNTY OF SAN
26 FRANCISCO, a subdivision of the State
27 of California, CITY AND COUNTY OF
28 SAN FRANCISCO, a chartered California
city and county and DOE 1 through DOE
10,

Defendants.

Case No. C07-6067 PJH

The Honorable Phyllis J. Hamilton

**JOINT CASE MANAGEMENT
STATEMENT AND [PROPOSED]
ORDER**

Hearing Date: February 11, 2010
Time: 2:30 P.M.

1 The parties in this action hereby submit this Joint Case Management Statement and advise the
 2 Court as follows:

3 1. On April 17, 2008, Metro Fuel filed its First Amended Complaint.
 4 2. In its First Amended Complaint, Metro Fuel alleged one cause of action under 42
 5 U.S.C. § 1983. Metro Fuel's one cause of action, however, was premised on three distinct legal
 6 theories. First, in paragraphs 23-80, Metro Fuel alleged that Article 6 of the San Francisco Planning
 7 Code violated the First Amendment of the U.S. Constitution (the "*Metro Lights* claim"). Second, in
 8 paragraphs 81-89, Metro Fuel alleged that the practical effect of San Francisco's ban on new general
 9 advertising signs (San Francisco Planning Code section 611) is the reservation "for itself a monopoly
 10 over outdoor advertising signs in San Francisco" in violation of the First Amendment of the U.S.
 11 Constitution (the "Government Monopoly claim"). Third, in paragraphs 90-101, Metro Fuel alleged
 12 that various provisions of Article 6 of the San Francisco Planning Code discriminate against non-
 13 commercial speech in violation of the First Amendment of the U.S. Constitution (the "Non-
 14 Commercial Speech claim").

15 3. On August 29, 2008, the City filed a motion for judgment on the pleadings under
 16 Fed.R.Civ.P. 12(c) attacking Metro Fuel's *Metro Lights* claim on several grounds. On September 12,
 17 2008, Metro Fuel filed its opposition to the City's motion.

18 4. On January 6, 2009, the United States Court of Appeals for the Ninth Circuit (the
 19 "Ninth Circuit") issued its decision in *Metro Lights, L.L.C. v. City of Los Angeles*, 551 F.3d 898 (9th
 20 Cir. 2009) (the "*Metro Lights* decision"). The Ninth Circuit held that Los Angeles's regulatory
 21 scheme prohibiting new off-site general advertising signs did not violate the First Amendment, even
 22 though Los Angeles allowed off-site advertising on city-owned transit stops and other street furniture.
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5. Metro Fuel conceded that the *Metro Lights* decision, to the extent it is not reversed in an *en banc* proceeding or by the United States Supreme Court, disposed of its *Metro Lights* claim in this action against San Francisco.

6. On January 20, 2009, the parties filed a stipulation stating that the parties agreed that this Court should grant San Francisco's motion for judgment on the pleadings with respect to the *Metro Lights* claim alleged in paragraphs 23-80 of the First Amended Complaint.

7. On January 22, 2009, this Court entered an order granting the City's motion for judgment on the pleadings in part and dismissing Metro Fuel's *Metro Lights* claim.

8. On or about April 16, 2009, the United States Court of Appeals for the Ninth Circuit denied the petition for rehearing en banc in the *Metro Lights* case.

9. Metro Fuel (which is the successor in interest to Metro Lights) filed its petition for certiorari to the United States Supreme Court in the *Metro Lights* case on August 31, 2009.

10. On December 14, 2009, the United States Supreme Court denied Metro Fuel's petition for certiorari in the *Metro Lights* case.

11. Metro Fuel has indicated to the City that it intends to move forward with its Government Monopoly and Non-Commercial Speech claims. The City believes that these claims are susceptible to a Fed.R.Civ.Proc. 12(c) motion. Metro Fuel believes that these claims are not susceptible to a Fed.R.Civ.Proc. 12(c) motion, and that any such motion would not be timely.

12. The parties have met and conferred and propose the following briefing schedule for the City's Fed.R.Civ.Proc. 12(c) motion:

Motion/Opening Brief 4/02/10

Opposition Brief 4/16/10

Reply Brief 4/23/10

Hearing 5/26/10 at 9:00 a.m.

13. The parties request that the Case Management Conference set for February 11, 2010, be continued, if necessary, until after the Court rules on the City's Fed.R.Civ.Proc. 12(c) motion.

Dated: January 28, 2010

EMERY CELLI BRINCKERHOFF & ABADY LLP

Dated: January 28, 2010

REUBEN & JUNIUS, LLP

By: _____ /S/ .
SHANNON S. LINDSAY

Attorneys for Plaintiff METRO FUEL, LLC

Dated: January 28, 2010

DENNIS J. HERRERA
City Attorney
KRISTEN A. JENSEN
THOMAS S. LAKRITZ
VICTORIA WONG
Deputy City Attorneys

Attorneys for Defendant CITY AND COUNTY
OF SAN FRANCISCO

[PROPOSED] CASE MANAGEMENT ORDER

The Case Management Conference Statement of the parties is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order.

IT IS SO ORDERED:

Dated: 2/1/10

By

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

HONORABLE JUDGE PHYLIS J. HAMILTON

Court Judge

IT IS SO ORDERED

Phyllis J. Hamilton

Judge Phyllis J. Hamilton

1 **SIGNATURE ATTESTATION**
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3

4 (U.S.D.C. N.D. Cal. General Order 45, Section X.B)
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6

7 I obtained the concurrence in the filing of this document from each other signatory, or from
8 the single signatory, in compliance with U.S.D.C. N.D. General Order 45, Section X.B.
9
10

11 Dated: January 28, 2010

12 DENNIS J. HERRERA
13 City Attorney
14 KRISTEN A. JENSEN
15 THOMAS S. LAKRITZ
16 VICTORIA WONG
17 Deputy City Attorneys

18 By: /S/
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